IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

WEDNESDAY, THE 14TH FEBRUARY 2007 / 25TH MAGHA 1928

CRP.No. 703 of 2000(A)

AGAINST THE ORDER DATED 05/10/1999 IN EA.47/1999 IN EP.55/1998 IN OS.181/1990 OF THE MUNSIFF'S COURT, PALA

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REVN. PETITIONERS:

1. V.U.JOSEPH, S/O.UTHUPPAN, VETTIKKANAL HOUSE, VELIYANNOOR KARA, VELIYANNOOR VILLAGE, KOTTAYAM DIST.

2. P.L. ABRAHAM, S/O. LUKKA, PULICKATHOTTIYIL HOUSE, UZHAVOOR VILLAGE, KOTTAYAM DIST.

BY ADV. SRI.B.KRISHNA MANI
SRI.V.PREMCHAND

RESPONDENTS:

M/S.MAHARASHTRA APEX CORPORATION LTD., REGD. OFFICE SYNDICATE HOUSE, MANIPAL, REPRESENTED LBY ITS POWER OF ATTORNEY HOLDER N. KRISHNAKUMAR, SON OF S.RAMAN, KALLUVETTAMKUZHIYIL, THALIKOTTA BHAGOM, KOTTAYAM VILLAGE, KOTTAYAM TALUK (BRANCH MANAGER, KOTTAYAM BR.).

BY ADV. SRI.P.SHRIHARI
SMT.P.VANI

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 14/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CMP.NO.1452/2000 IN CRP.703/2000

DISMISSED

14.2.2007 Sd/- P.R.RAMAN,JUDGE.

P.R.RAMAN,J.

C.R.P.NO. 703 OF 2000

Dated this the 14th day of February, 2007

O R D E R

Petitioners are judgment debtors. A decree was eventually passed against them in the suit O.S.No.181/90 for a sum of Rs.52,077/- with future interest at 24% on Rs.38,600/- from the date of the suit (i.e.17/10/1990) till the date of realisation. It was that decree which was sought to be executed by filing E.P.No.55/1998. It was an ex parte decree. In the execution stage they filed an E.A. inter alia contending that there was no proper notice in the suit and hence the decree is a nullity. The court below found that the only question regarding lack of jurisdiction of the court could be gone into by the execution court and whether the decree was passed with

proper notice is not a matter affecting the jurisdiction of the court and in the absence of any materials placed on record, the court below found that there is no merit in the E.A. and accordingly it is dismissed. The learned counsel for the petitioner was heard in the matter. He was not in a position to support his plea that the question of want of notice could be gone into by execution court. If there was no proper notice served before passing the ex parte decree, then the remedy open is to file an appropriate application to set aside the decree or to challenge the decree in appeal or revision, as the case may be. Once a decree is passed whether there was a proper notice served is a contention virtually against the decree as one passed illegally. As this contention does not affect the jurisdiction of the court and since no

such contention was raised at the trial stage seeking to set aside the ex parte decree, I do not find any error of jurisdiction or material irregularity in the order impugned in this revision. Accordingly, this revision is dismissed.

P.R.RAMAN,
Judge.

kcv.

P.R.RAMAN, J.

C.R.P.NO.703 OF 2000

O R D E R

14th February, 2007